

UNITED STATES INTERNATIONAL TRADE COMMISSION

Extruded Rubber Thread From Malaysia  
Investigation No. 731-TA-527 (Review)

DETERMINATION AND VIEWS OF THE COMMISSION  
(USITC Publication No. 3327, July 2000)

# UNITED STATES INTERNATIONAL TRADE COMMISSION

Investigation No. 731-TA-527 (Review)

## EXTRUDED RUBBER THREAD FROM MALAYSIA

### DETERMINATION

On the basis of the record<sup>1</sup> developed in the subject five-year review, the United States International Trade Commission determines, pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. § 1675(c)) (the Act), that revocation of the antidumping duty order on extruded rubber thread from Malaysia would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.

### BACKGROUND

The Commission instituted this review on August 2, 1999 (64 F.R. 41954) and determined on November 4, 1999 that it would conduct a full review (64 F.R. 62689, November 17, 1999 ). Notice of the scheduling of the Commission's review and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the *Federal Register* on January 20, 2000 (65 F.R. 3246). The hearing was held in Washington, DC, on June 1, 2000, and all persons who requested the opportunity were permitted to appear in person or by counsel.

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<sup>1</sup> The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR § 207.2(f)).

## VIEWS OF THE COMMISSION

Based on the record in this five-year review, we determine under section 751(c) of the Tariff Act of 1930, as amended (“the Act”), that revocation of the antidumping duty order covering imports of extruded rubber thread (“ERT”) from Malaysia would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.

### I. BACKGROUND

On September 30, 1992, the Commission determined that an industry in the United States was materially injured by reason of LTFV imports of ERT from Malaysia.<sup>2</sup> Commerce imposed an antidumping duty order on October 7, 1992.<sup>3</sup>

On August 2, 1999, the Commission instituted a review pursuant to section 751(c) of the Tariff Act of 1930, as amended (“the Act”), to determine whether revocation of the antidumping duty order on extruded rubber thread from Malaysia would likely lead to the continuation or recurrence of material injury.<sup>4</sup>

In five-year reviews, the Commission initially determines whether to conduct a full review (which would include a public hearing, the issuance of questionnaires, and other procedures) or an expedited review, as follows. First, the Commission determines whether individual responses of interested parties to the notice of institution are adequate. Second, based on those responses deemed individually adequate, the Commission determines whether the collective responses submitted by two groups of interested parties – domestic interested parties (producers, unions, trade associations, or worker groups) and respondent interested parties (importers, exporters, foreign producers, trade associations, or subject country governments) – demonstrate a sufficient willingness among each group to participate and provide information requested in a full review.<sup>5</sup> If the Commission finds the responses from either group of interested parties to be inadequate, the Commission may determine, pursuant to section 751(c)(3)(B) of the Act, to conduct an expedited review unless it finds that other circumstances warrant a full review.

The Commission received a response to the notice of institution on behalf of North American Rubber Thread (“North American”), the sole remaining domestic producer of ERT.<sup>6</sup> The Commission also received two joint responses from Malaysian ERT producers and their related importers.<sup>7</sup> The Commission determined that both the domestic interested party and respondent interested party group responses were

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<sup>2</sup> Extruded Rubber Thread from Malaysia, Inv. No. 731-TA-527 (Final), USITC Pub. 2559 (Sept. 1992) (hereinafter “Original Determination.”)

<sup>3</sup> 57 Fed. Reg. 46150 (Oct. 7, 1992).

<sup>4</sup> 64 Fed. Reg. 41954 (Aug. 2, 1999).

<sup>5</sup> See 19 C.F.R. § 207.62(a); 63 Fed. Reg. 30599, 30602-05 (June 5, 1998).

<sup>6</sup> In North American’s Response to the Notice of Institution it indicated that Globe Manufacturing Company (“Globe”) was the only other U.S. producer of the domestic like product. North American’s Response to Notice of Institution at 8-9. North American is finalizing the purchase of \*\*\* of Globe’s ERT plant and equipment. North American’s Posthearing Brief at 6.

<sup>7</sup> The Commission received a joint response to the notice of institution, containing company-specific information, from Filati Lastex Sdn. Bhd. (“Filati”), a foreign producer and exporter, and FLE-U.S.A. Inc., a U.S. importer of the subject merchandise and a wholly-owned subsidiary of Filati. The Commission also received a joint response, containing company-specific information, from Heveafil Sdn. Bhd. (“Heveafil”) and Filmax Sdn. Bhd., foreign producers and exporters, and Heveafil U.S.A. Inc., a U.S. importer of the subject merchandise and a wholly-owned subsidiary of Heveafil.

adequate.<sup>8 9</sup> Accordingly, the Commission determined that it would conduct a full review pursuant to section 751(c)(5) of the Act.<sup>10</sup>

## II. DOMESTIC LIKE PRODUCT AND INDUSTRY

### A. Domestic Like Product

In making its determination under section 751(c), the Commission defines the “domestic like product” and the “domestic industry.”<sup>11</sup> The Act defines “domestic like product” as “a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this subtitle.”<sup>12</sup> In a section 751(c) review, the Commission must also take into account “its prior injury determination.”<sup>13</sup>

In its final five-year review determination, Commerce defined the subject merchandise in this review as follows:

The product covered by this review is extruded rubber thread from Malaysia. Extruded rubber thread is defined as vulcanized rubber thread obtained by extrusion of stable or concentrated natural rubber latex of any cross sectional shape, measuring from 0.18 mm, which is 0.007 inch or 140 gauge, to 1.42 mm, which is 0.056 inch or 18 gauge, in diameter. Extruded rubber thread is currently classifiable under subheading 4007.00.00 of the Harmonized Tariff Schedule of the United States (“HTSUS”). The HTSUS subheadings are provided for convenience and customs purposes. The written description of the scope of this proceeding is dispositive.<sup>14</sup>

ERT consists of vulcanized rubber thread obtained by extrusion of stabilized or concentrated natural rubber latex, of any cross sectional shape.<sup>15</sup> Subject extruded rubber thread measures from 0.18 mm (which is 0.007 inch or 140 gauge) to 1.42 mm (which is 0.056 inch or 18 gauge) in diameter. The size of an individual thread is usually expressed in “gauge” or “count,” which are terms that refer to the number of threads that would, if set down side-by-side, produce a ribbon 1 inch wide.<sup>16</sup> There is no known production of thread that is finer than 110 gauge.<sup>17</sup>

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<sup>8</sup> See Explanation of Commission’s Determination of Adequacy.

<sup>9</sup> In a letter to staff dated April 18, 2000, counsel for Heveafil/Filmax and Filati, subject producers of ERT, and Heveafil USA and FLE USA, importers of ERT, indicated they would not be completing the Commission’s questionnaires. In a subsequent letter of May 1, 2000, the subject respondents stated that they “have decided to withdraw from further participation in the above-reference sunset review” and wished to be removed from the APO service list. The Commission conducted a hearing in which only a representative of North American appeared. However, on May 31, 2000, the Commission received partial questionnaire data from Heveafil USA and FLE USA.

<sup>10</sup> 64 Fed. Reg. 62689 (Nov. 17, 1999).

<sup>11</sup> 19 U.S.C. § 1677(4)(A).

<sup>12</sup> 19 U.S.C. § 1677(10). See Nippon Steel Corp. v. United States, 19 CIT 450, 455 (1995); Timken Co. v. United States, 913 F. Supp. 580, 584 (CIT 1996); Torrington Co. v. United States, 747 F. Supp. 744, 748-49 (CIT 1990), aff’d, 938 F.2d 1278 (Fed. Cir. 1991). See also S. Rep. No. 96-249 at 90-91 (1979).

<sup>13</sup> 19 U.S.C. § 1675(a)(1)(a).

<sup>14</sup> 65 Fed. Reg. 11981, 11982 (Mar. 7, 2000).

<sup>15</sup> CR at I-11; PR at I-10.

<sup>16</sup> CR at I-11, n.14; PR at I-10, n.14.

<sup>17</sup> CR at I-11, n.14; PR at I-10, n.14.

The Commission found in the original determination that there was one domestic like product consisting of “all extruded rubber thread.”<sup>18</sup> The only domestic like product question in this review concerns whether food-grade ERT should be treated as a separate like product from other ERT. North American argues that there should be a single domestic like product encompassing all ERT.<sup>19</sup> No Malaysian producers participated in the full review. However, in response to the notice of institution, the Malaysian producers claimed that food-grade ERT should be considered a separate like product.<sup>20</sup>

North American has indicated that it intends to \*\*\* of Globe’s formula patent for producing food-grade ERT in the future.<sup>21</sup> However, there has been no domestic production of food-grade ERT for commercial shipment in recent years,<sup>22</sup> and given the need to obtain FDA approval for food-grade ERT production,<sup>23</sup> we find that it is unlikely that there will be commercial production of food-grade ERT in the reasonably foreseeable future.<sup>24</sup> In the absence of domestic production of food-grade ERT, food-grade ERT cannot itself be considered a separate domestic like product.<sup>25</sup> Thus, as required by the statute, we must look for the domestically-produced product that is most similar in characteristics and uses to the subject merchandise, which encompasses both food-grade and non-food grade ERT.<sup>26</sup> In this review, application of our traditional six-factor analysis leads us to the conclusion that non-food-grade ERT is the domestically-produced product that is most similar in characteristics and uses with the subject imports, including subject imports of food-grade ERT.<sup>27</sup> Accordingly, we define the domestic like product, as in the original determination, as all extruded rubber thread.

## **B. Domestic Industry**

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<sup>18</sup> Original Determination at 12. Vice Chairman Watson, Commissioner Brunsdale, and Commissioner Crawford dissenting with respect to food-grade extruded rubber thread. *Id.* at 34. Respondents had argued that food-grade extruded rubber thread should be a separate like product from other extruded rubber thread. *Id.* at 7. However, the Commission rejected this argument and found one like product based on similarities in physical characteristics, production processes and employees, and price. Specifically, the Commission found that “[t]he multiplicity of minor distinctions among different varieties of extruded rubber thread demonstrate no ‘clear dividing lines’ which distinguish one variety of extruded rubber thread (including food-grade) from any other.” *Id.* at 12.

<sup>19</sup> North American’s Response to Notice of Institution at 12.

<sup>20</sup> Malaysian Producers’ Responses to Notice of Institution at 6.

<sup>21</sup> CR at I-17; PR at I-13; North American’s Posthearing Brief at 4. *See also*, Extruded Rubber Thread from Malaysia, Inv. No. 753-TA-34, USITC Pub. 3112 (June 1998) at 4, 5 stating that there had been no domestic production of food-grade ERT for commercial purposes in recent years but that extremely small quantities were produced domestically for research and development purposes.

<sup>22</sup> CR at I-17; PR at I-13.

<sup>23</sup> CR at II-3; PR at II-2.

<sup>24</sup> *See* North American’s Posthearing Brief at 4.

<sup>25</sup> *See Id.* at 5. *See also*, Certain Hot-Rolled Steel Products from Brazil, Japan, and Russia, Inv. Nos. 701-TA-384 (Preliminary) and 731-TA-806-808 (Preliminary) USITC Pub. 3142 (November 1998) at 5, n.14.

<sup>26</sup> *See* Extruded Rubber Thread from Malaysia, Inv. No. 753-TA-34, USITC Pub. 3112 (June 1998) at 4-5, & n.14 (citing 19 U.S.C. 1677(10); and Professional Electric Cutting and Sanding/Grinding Tools from Japan, Inv. No. 731-TA-571 (Preliminary) USITC Pub. 2536 (July 1992) at 17 (“A product not produced in the United States is not an appropriate candidate for a separate like product determination, unless material retardation. . . is a genuine issue.”); Nepheline Syenite from Canada, Inv. No. 731-TA-525 (Final) USITC Pub. 2502 (April 1992) at 7 & n.9 (Commission cannot find that there is no domestic like product)).

The Commission noted in Extruded Rubber Thread from Malaysia, Inv. No. 753-TA-34, USITC Pub. 3112 (June 1998), at 5, n.14 that the domestically produced product most similar in characteristics and uses to food-grade ERT was all ERT.

<sup>27</sup> *See* Extruded Rubber Thread from Indonesia, Inv. No. 731-TA-787, USITC Pub. 3191 (May 1999).

Section 771(4)(A) of the Act defines the relevant industry as the “domestic producers as a whole of a like product, or those producers whose collective output of the like product constitutes a major proportion of the total domestic production of that product.”<sup>28</sup> Given our definition of the domestic like product, we determine that there is one domestic industry for the purpose of this review consisting of all domestic producers of extruded rubber thread.<sup>29</sup>

### **III. REVOCATION OF THE ANTIDUMPING DUTY ORDER ON EXTRUDED RUBBER THREAD FROM MALAYSIA WOULD LIKELY LEAD TO CONTINUATION OR RECURRENCE OF MATERIAL INJURY WITHIN A REASONABLY FORESEEABLE TIME**

#### **A. Legal Standard**

In a five-year review conducted under section 751(c) of the Act, Commerce will revoke an antidumping duty order unless: (1) it makes a determination that subsidization and/or dumping is likely to continue or recur, and (2) the Commission makes a determination that revocation of an order “would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time.”<sup>30</sup> The SAA states that “under the likelihood standard, the Commission will engage in a counter-factual analysis; it must decide the likely impact in the reasonably foreseeable future of an important change in the status quo – the revocation [of the order] . . . and the elimination of its restraining effects on volumes and prices of imports.”<sup>31</sup> Thus, the likelihood standard is prospective in nature.<sup>32</sup> The statute provides that “the Commission shall consider that the effects of revocation . . . may not be imminent, but may manifest themselves only over a longer period of time.”<sup>33</sup> According to the SAA, a “‘reasonably foreseeable time’ will vary from case-to-case, but normally will exceed the ‘imminent’ time frame applicable in a threat of injury analysis [in antidumping duty investigations].”<sup>34 35</sup>

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<sup>28</sup> 19 U.S.C. § 1677(4)(A).

<sup>29</sup> In this review, there are no related party issues. No domestic ERT producer has reported imports from Malaysia, or is affiliated with an exporter of subject merchandise. *See* North American’s Response to Notice of Institution at 2. CR at I-18 and IV-1 (as amended by INV-X-152); PR at I-14 and IV-1.

<sup>30</sup> 19 U.S.C. § 1675a(a).

<sup>31</sup> SAA, H.R. Rep. No. 103-316, vol. I, at 883-84 (1994). The SAA states that “[t]he likelihood of injury standard applies regardless of the nature of the Commission’s original determination (material injury, threat of material injury, or material retardation of an industry).” SAA at 883.

<sup>32</sup> While the SAA states that “a separate determination regarding current material injury is not necessary,” it indicates that “the Commission may consider relevant factors such as current and likely continued depressed shipment levels and current and likely continued [sic] prices for the domestic like product in the U.S. market in making its determination of the likelihood of continuation or recurrence of material injury if the order is revoked.” SAA at 884.

<sup>33</sup> 19 U.S.C. § 1675a(a)(5).

<sup>34</sup> SAA at 887. Among the factors that the Commission should consider in this regard are “the fungibility or differentiation within the product in question, the level of substitutability between the imported and domestic products, the channels of distribution used, the methods of contracting (such as spot sales or long-term contracts), and lead times for delivery of goods, as well as other factors that may only manifest themselves in the longer term, such as planned investment and the shifting of production facilities.” *Id.*

<sup>35</sup> In analyzing what constitutes a reasonably foreseeable time, Chairman Koplan examines all the current and likely conditions of competition in the relevant industry. He defines “reasonably foreseeable time” as the length of time it is likely to take for the market to adjust to a revocation. In making this assessment, he considers all factors  
(continued...)

Although the standard in five-year reviews is not the same as the standard applied in original antidumping duty investigations, it contains some of the same fundamental elements. The statute provides that the Commission is to “consider the likely volume, price effect, and impact of imports of the subject merchandise on the industry if the order is revoked.”<sup>36</sup> It directs the Commission to take into account its prior injury determination, whether any improvement in the state of the industry is related to the order under review, and whether the industry is vulnerable to material injury if the order is revoked.<sup>37 38</sup>

We note that Section 776(a) of the Act authorizes the Commission to take adverse inferences in five-year reviews, but such authorization does not relieve the Commission of its obligation to consider the record evidence as a whole in making its determination.<sup>39</sup> We generally give credence to the facts supplied by the participating parties and certified by them as true, but base our decision on the evidence as a whole, and do not automatically accept the participating parties’ suggested interpretation of the record evidence. Regardless of the level of participation and the interpretations urged by participating parties, the Commission is obligated to consider all evidence relating to each of the statutory factors and may not draw adverse inferences that render such analysis superfluous. “In general, the Commission makes determinations by weighing all of the available evidence regarding a multiplicity of factors relating to the domestic industry as a whole and by drawing reasonable inferences from the evidence it finds most persuasive.”<sup>40</sup>

For the reasons stated below, we determine that revocation of the antidumping duty order on ERT from Malaysia would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time.

## **B. Conditions of Competition**

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<sup>35</sup> (...continued)

that may accelerate or delay the market adjustment process including any lags in response by foreign producers, importers, consumers, domestic producers, or others due to: lead times; methods of contracting; the need to establish channels of distribution; product differentiation; and any other factors that may only manifest themselves in the longer term. In other words, this analysis seeks to define “reasonably foreseeable time” by reference to current and likely conditions of competition, but also seeks to avoid unwarranted speculation that may occur in predicting events into the more distant future.

<sup>36</sup> 19 U.S.C. § 1675a(a)(1).

<sup>37</sup> 19 U.S.C. § 1675a(a)(1). The statute further provides that the presence or absence of any factor that the Commission is required to consider shall not necessarily give decisive guidance with respect to the Commission’s determination. 19 U.S.C. § 1675a(a)(5). While the Commission must consider all factors, no one factor is necessarily dispositive. SAA at 886.

<sup>38</sup> Section 752(a)(1)(D) of the Act directs the Commission to take into account in five-year reviews involving antidumping proceedings “the findings of the administrative authority regarding duty absorption.” 19 U.S.C § 1675a(a)(1)(D).

<sup>39</sup> 19 U.S.C. § 1675(c)(3)(B).

<sup>40</sup> SAA at 869.

In evaluating the likely impact of the subject imports on the domestic industry, the statute directs the Commission to consider all relevant economic factors “within the context of the business cycle and conditions of competition that are distinctive to the affected industry.”<sup>41</sup>

The level of U.S. aggregate demand for ERT depends in large part upon the demand for the various end use products utilizing ERT, which include apparel, textiles, and other diverse items.<sup>42</sup> U.S. apparent consumption of ERT increased steadily from 1989 through 1994, dropped during 1995, and returned to \*\*\* above its 1992 levels in 1997-1998, and then decreased by \*\*\* percent in 1999.<sup>43</sup> Apparent consumption during interim 2000 was \*\*\* percent below the interim 1999 level.<sup>44 45</sup>

Another significant condition of competition is the fact that there is now only one domestic ERT producer. As noted earlier, the domestic producer Globe withdrew from the ERT business in March 2000.<sup>46</sup> North American is operating portions of the Globe plant under an informal rental agreement,<sup>47</sup> and has stated that it is finalizing the purchase of Globe’s plant and equipment for ERT.<sup>48</sup> Despite the departure of Globe, the domestic industry’s capacity utilization rates have declined considerably during the period of review, decreasing from \*\*\* percent in 1997 to \*\*\* percent in 1999, and declining even further in interim 2000, to \*\*\* percent.

Substitutability between domestic and imported ERT depends upon such factors as relative prices and the extent of product differentiation between products from the various countries.<sup>49</sup> \*\*\*, and the majority of purchasers of ERT, stated that U.S. produced ERT and subject imports are used interchangeably.<sup>50</sup> Based on the record evidence, we find that there is a significant degree of substitutability between domestically produced ERT and subject imports.

Historically, imports from nonsubject countries have fluctuated considerably from year to year with few apparent barriers to quick entry or exit from the U.S. market.<sup>51</sup> Since the imposition of the original order against Malaysia, Indonesia has traditionally been by far the largest source of nonsubject imports into the United States.<sup>52</sup> However, in 1999, an antidumping duty order was placed on ERT imports from Indonesia.<sup>53</sup> Indonesian exports of ERT fell to about half of their 1998 level in 1999.<sup>54</sup>

### **C. Likely Volume of Subject Imports**

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<sup>41</sup> 19 U.S.C. § 1675a(a)(4).

<sup>42</sup> CR at I-13, II-11; PR at I-11, II-5.

<sup>43</sup> CR at II-12; PR at II-5.

<sup>44</sup> CR at II-12; PR at II-5.

<sup>45</sup> North American’s Posthearing Brief at 8. Additionally, there is some indication that ERT end users are relocating outside of the United States. The movement “offshore” refers primarily to movement to Canada and Mexico. CR at II-12; PR at II-6.

<sup>46</sup> CR at II-5; PR at II-3.

<sup>47</sup> CR at I-18; PR at I-14.

<sup>48</sup> CR at II-6, III-6; PR at II-3, III-2.

<sup>49</sup> CR at II-15; PR at II-7.

<sup>50</sup> CR at II-18; PR at II-9. Although Globe did not respond to the Commission’s Notice of Institution, Globe did submit both producer and importer questionnaire responses.

<sup>51</sup> CR at II-10; PR at II-5.

<sup>52</sup> CR at II-11; PR at II-5.

<sup>53</sup> See 64 Fed. Reg. 27755 (May 21, 1999).

<sup>54</sup> CR at II-11; PR at II-5.



In evaluating the likely volume of imports of subject merchandise if the order under review is revoked, the Commission is directed to consider whether the likely volume of imports would be significant either in absolute terms or relative to production or consumption in the United States.<sup>55</sup> In doing so, the Commission must consider “all relevant economic factors,” including four enumerated factors: (1) any likely increase in production capacity or existing unused production capacity in the exporting country; (2) existing inventories of the subject merchandise, or likely increases in inventories; (3) the existence of barriers to the importation of the subject merchandise into countries other than the United States; and (4) the potential for product shifting if production facilities in the foreign country, which can be used to produce the subject merchandise, are currently being used to produce other products.<sup>56</sup>

In the original investigation, the Commission found that the volume of subject imports increased significantly throughout the period of investigation, more than doubling from 1989 to 1990, and then continuing to increase substantially from 1990 to 1991.<sup>57</sup> Market penetration of subject imports from Malaysia, by quantity, also increased dramatically and consistently during the original period of investigation, rising from less than 20 percent of apparent U.S. consumption in 1989 to over 50 percent in 1991.<sup>58</sup> Market penetration by value exhibited a similar trend, but at a lower absolute value, reflecting the lower average unit value of subject import shipments compared with domestic shipments.<sup>59</sup> Following the imposition of the order, the Malaysian share of the U.S. market declined significantly, although it has increased in 1999 and interim (January-March) 2000.<sup>60</sup> These volume and market share increases occurred in 1999, after the dumping margins applicable to three significant Malaysian producers declined to small or minimal levels.<sup>61</sup>

Both during the original investigation and the period of review, Malaysian exporters have demonstrated an ability to greatly increase exports to the United States. For example, during the current period of review, the subject imports from Malaysia increased from 5.46 million pounds in 1998 to 9.29 million pounds in 1999.<sup>62</sup> Subject imports also increased between interim 1999 and interim 2000, from 1.57 million pounds to 2.59 million pounds.<sup>63</sup>

The share of U.S. consumption of ERT increased for both U.S. and Malaysian producers over the period of review; however, the increase was \*\*\* for the Malaysians. The U.S. producers’ market share increased by \*\*\* percentage points from 1998 to 1999, while the market share of subject imports increased by \*\*\* percentage points.<sup>64</sup> Market share increases between interim 1999 and interim 2000, for U.S. and Malaysian producers were \*\*\* percentage points and

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<sup>55</sup> 19 U.S.C. § 1675a(a)(2).

<sup>56</sup> 19 U.S.C. § 1675a(a)(2)(A)-(D).

<sup>57</sup> Original Determination at 21.

<sup>58</sup> Original Determination at 22. Data for interim 1992 demonstrated an even larger presence in the U.S. market. *Id.*

<sup>59</sup> Original Determination at 22.

<sup>60</sup> See CR and PR at Table I-1. The share of U.S. consumption quantity held by Malaysian imports was \*\*\* in 1992 and declined to \*\*\* percent in 1993. Subsequently, the Malaysian market share was \*\*\* percent in 1993, \*\*\* percent in 1995, \*\*\* percent in 1996, \*\*\* percent in 1997, \*\*\* percent in 1998, \*\*\* percent in 1999, and \*\*\* percent in interim 2000. *Id.*

<sup>61</sup> CR at I-9; PR at I-8. Rubberflex reported that \*\*\*. CR at IV-4-5; PR at IV-3. See also CR at I-9; PR at I-8, providing Department of Commerce Administrative Review Information. We also note that increased imports from Malaysia coincided with the placement of the antidumping duty order on Indonesia.

<sup>62</sup> CR and PR at Table I-3.

<sup>63</sup> CR and PR at Table I-3.

<sup>64</sup> CR at I-19; PR at I-15. Market share held by U.S. producers and Malaysian imports, on the basis of value, increased by \*\*\* percentage points and \*\*\* percentage points, respectively. *Id.*

\*\*\* percentage points, respectively.<sup>65</sup> While Malaysian market share was increasing at a rate \*\*\* than that for the U.S. industry, the market share held by nonsubject imports decreased substantially between 1998 and 1999 and the interim 1999 and 2000 periods.<sup>66</sup>

There are currently four known manufacturers of ERT in Malaysia: (1) Heveafil Sdn. Bhd.; (2) Filmax Sdn. Bhd.; (3) Filati Lastex Elastofibre Sdn. Bhd.; and (4) Rubberflex Sdn. Bhd.<sup>67</sup> At least partially as a result of a shift of Italian producers to plants located in Malaysia, ERT production in Malaysia has increased significantly over the past 25 years.<sup>68</sup> The first Malaysian ERT production plant began operating during the 1970's. By 1999, Malaysian firms supplied about 84 percent of the world demand for rubber thread.<sup>69</sup> In fact, Malaysia is reported to possess the largest capacity for ERT production in the world.<sup>70</sup> Malaysia has a current production capacity of at least \*\*\* of ERT per year which is \*\*\* larger than total U.S. consumption.<sup>71</sup> In addition, the Malaysian ERT industry is highly export oriented.<sup>72</sup> Shipments to the Malaysian market account for \*\*\* percent of total Malaysian shipments.<sup>73</sup>

Due to the Malaysian producers' failure to provide information in this review, the record does not include the capacity utilization rates for several Malaysian producers for 1998 and 1999. However, Rubberflex, the only reporting Malaysian producer, indicates that its capacity utilization fell from \*\*\* percent in 1998 to \*\*\* percent in 1999. Rubberflex's capacity utilization was \*\*\* percent interim 1999

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<sup>65</sup> CR at I-19; PR at I-15.

<sup>66</sup> CR at I-19-20; PR at I-15.

<sup>67</sup> CR at IV-4; PR at IV-3.

<sup>68</sup> CR at IV-5; PR at IV-3.

<sup>69</sup> CR at IV-5; PR at IV-3.

<sup>70</sup> CR at II-9; PR at II-4. *See also* CR and PR at Table IV-4; Malaysian Producers' Response to Notice of Institution at Exhibit 1.

<sup>71</sup> *See* CR and PR at Table I-1.

<sup>72</sup> CR at II-10; PR at II-4 (indicating that Malaysian producers sell the majority of their ERT in markets outside Malaysia and the United States).

<sup>73</sup> CR at II-10; PR at II-4; CR and PR at Table IV-4.

compared with \*\*\* percent in interim 2000.<sup>74 75 76</sup> Importantly, Rubberflex's excess capacity in 1999 alone was equivalent to nearly \*\*\* of U.S. apparent consumption in that year.

Based on the record in this review, it is likely that producers in Malaysia would significantly increase exports to the U.S. market if the order were revoked. We therefore conclude that the volume of subject imports would likely increase to a significant level absent the restraining effects of the order.

#### **D. Likely Price Effects**

In evaluating the likely price effects of subject imports if the antidumping duty order is revoked, the Commission is directed to consider whether there is likely to be significant underselling by the subject imports as compared with domestic like products and whether the subject imports are likely to enter the United States at prices that would have a significant depressing or suppressing effect on the prices of domestic like products.<sup>77</sup>

During the original investigation, the Commission found that prices of imported and domestically produced ERT generally fell over the period of investigation.<sup>78</sup> Price declines for subject imports were much greater than for the domestic like product, particularly after the time period during which natural rubber latex prices were falling.<sup>79</sup> The Commission found it significant that in each quarterly period for which price comparisons were possible, the subject imports undersold the domestic like product, by margins generally in excess of 30 percent.<sup>80</sup> The Commission thus found significant underselling by the subject imports, and that subject imports suppressed the domestic prices.

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<sup>74</sup> CR and PR at Table IV-4.

<sup>75</sup> We do note that end-of-period inventories in Malaysia, as reported by Rubberflex, declined by \*\*\* percent from 1998 to 1999, while the ratios of inventories to production and shipments also declined during the period. First quarter 2000 end-of-period inventories were \*\*\* percent lower than in the first quarter 1999, while the ratio of inventories to production was \*\*\* lower, and the ratio of inventories to shipments was \*\*\* higher. Rubberflex's inventory levels from 1998 to interim 2000 were \*\*\*, with levels in the neighborhood of \*\*\* percent of yearly production. CR and PR at Table IV-4.

<sup>76</sup> Chairman Koplan and Commissioners Miller and Hillman note that two Malaysian producers – Heveafil/Filmax and Filati – which account for \*\*\* of Malaysian production, responded to the Commission's notice of institution and expressed their willingness to participate in the review by providing information requested by the Commission. Chairman Koplan and Commissioners Miller and Hillman determined that the respondent interested party group response was adequate and voted to conduct a full review on the basis of the responses of these companies and their related U.S. importers. Subsequently, these companies refused to respond to the Commission's questionnaires (although their related U.S. importers did submit partial data well after the Commission's deadline). Chairman Koplan and Commissioners Miller and Hillman conclude that it is appropriate in such circumstances to take adverse inferences pursuant to 19 U.S.C. § 1677e(b). Accordingly, Chairman Koplan and Commissioners Miller and Hillman infer that the interim 2000 capacity utilization information submitted by Rubberflex – \*\*\* percent – is representative of the capacity utilization levels of Heveafil/Filmax and Filati and that these producers are likely to use their excess capacity to substantially increase shipments to the U.S. market.

<sup>77</sup> 19 U.S.C. § 1675a(a)(3). The SAA states that “[c]onsistent with its practice in investigations, in considering the likely price effects of imports in the event of revocation and termination, the Commission may rely on circumstantial, as well as direct, evidence of the adverse effects of unfairly traded imports on domestic prices.” SAA at 886.

<sup>78</sup> Original Determination at 22.

<sup>79</sup> Original Determination at 23.

<sup>80</sup> Original Determination at 23.

In the current review, the Commission collected quarterly pricing data from U.S. producers and from importers for three separate categories of ERT.<sup>81</sup> For the first two products, subject import prices were generally \*\*\* percent below those of U.S. producers.<sup>82</sup> The margin was \*\*\* larger for product three.<sup>83</sup> For all three products, the price of domestically-produced ERT declined over the period of review. We note that average unit values of subject imports from Malaysia are consistently lower than that for the domestically produced product,<sup>84</sup> and were generally below the average unit values of nonsubject imports as well.<sup>85 86 87</sup>

The pricing patterns of the subject imports both currently and during the original period of investigation indicate that, if the antidumping order is revoked, there is likely to be even more significant underselling by the subject imports to gain market share.<sup>88 89</sup> In light of the general substitutability of the domestic and subject merchandise, and the importance of price in purchasing decisions, increases in subject import volumes will likely drive down ERT prices as domestic producers are forced to match the low prices offered by the subject imports. Consequently, we find that if the antidumping duty order is revoked, the subject imports will likely have significant price depressing or suppressing effects within a reasonably foreseeable time.

### **E. Likely Impact of Subject Imports**

In evaluating the likely impact of imports of subject merchandise if the order is revoked, the Commission is directed to consider all relevant economic factors that are likely to have a bearing on the state of the industry in the United States, including but not limited to: (1) likely declines in output, sales, market share, profits, productivity, return on investments, and utilization of capacity; (2) likely negative effects on cash flow, inventories, employment, wages, growth, ability to raise capital, and investment; and (3) likely negative effects on the existing development and production efforts of the industry, including efforts to develop a derivative or more advanced version of the domestic like product.<sup>90</sup> All relevant economic factors are to be considered within the context of the business cycle and the conditions of competition that are distinctive to the industry.<sup>91</sup> As required by the statute, we have considered the extent

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<sup>81</sup> CR at V-6; PR at V-4.

<sup>82</sup> CR at V-7; PR at V-4.

<sup>83</sup> CR at V-7; PR at V-4.

<sup>84</sup> CR at V-7; PR at V-4.

<sup>85</sup> See CR and PR at Table I-1.

<sup>86</sup> Original Determination at 23, 24. We also note that Commerce found that four companies absorbed duties on the following percentage of their U.S. sales during the review period covering October 1, 1995, to September 20, 1996: Heveafil 100 percent; Rubberflex 57.35 percent; Filati 100 percent; and Rubfil 100 percent. 65 Fed. Reg. 11981 (Mar. 7, 2000).

<sup>87</sup> Commissioner Bragg and Commissioner Askey note that, while they considered Commerce's duty absorption findings, they did not rely upon these findings in reaching their determinations in this review.

<sup>88</sup> We note that while COGS per pound declined by \*\*\* from 1998 to 1999, SG&A expenses increased by \*\*\* per pound, and therefore total unit costs increased. CR at III-7; PR at III-2.

<sup>89</sup> Commissioner Bragg infers that, in the event of revocation, subject producers will revert to aggressive pricing practices in connection with exports of subject merchandise to the United States, as evidenced in the Commission's original determination.

<sup>90</sup> 19 U.S.C. § 1675a(a)(4).

<sup>91</sup> 19 U.S.C. § 1675a(a)(4). Section 752(a)(6) of the Act states that "the Commission may consider the magnitude of the margin of dumping" in making its determination in a five-year review. 19 U.S.C. § 1675a(a)(6). The statute defines the "magnitude of the margin of dumping" to be used by the Commission in five-year reviews

(continued...)

to which any improvement in the state of the domestic industry is related to the antidumping duty order at issue and whether the industry is vulnerable to material injury if the order is revoked.<sup>92</sup>

In the original investigation, the Commission found that virtually every indicator demonstrated that the condition of the domestic industry deteriorated significantly during the period of investigation.<sup>93</sup> In light of the condition of the domestic industry, the increasing volumes and market share of the subject imports, underselling, and lost sales due to ERT imports from Malaysia, the Commission concluded that there was material injury by reason of subject imports.<sup>94</sup>

As discussed above, Globe has recently left the domestic industry, leaving North American as the sole U.S. producer of the domestic like product. North American showed declining profitability during the period reviewed and \*\*\* in interim 2000. Its production and shipments fell over the period reviewed.<sup>95</sup> Accordingly, we determine that the U.S. ERT industry is vulnerable to material injury if the order is revoked.<sup>96</sup>

We found above that revocation of the order would likely result in a significant increase in the volume of subject imports at prices significantly lower than those of the domestic like product, and that such increased volumes of subject imports would likely depress or suppress the industry's prices significantly. This would likely have a significant adverse impact on the production, shipment, sales, and revenue levels of the domestic industry. This reduction in the industry's production, sales, and revenue levels would have a direct adverse impact on the industry's employment, profitability, and ability to raise capital and make and maintain necessary capital investments. Accordingly, based on the record in this review, we conclude that, if the antidumping duty order is revoked, subject imports would be likely to have a significant adverse impact on the domestic industry within a reasonably foreseeable time.

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<sup>91</sup> (...continued)

as "the dumping margin or margins determined by the administering authority under section 1675a(c)(3) of this title." 19 U.S.C. § 1677(35)(C)(iv). See also SAA at 887. We note that in its sunset review of this order, Commerce found that revocation of the antidumping duty order would likely lead to continuation or recurrence of dumping at the following margins: 108.62 percent for Heveafil/Filmax Sdn. Bhd.; 20.36 percent for Rubberflex Sdn. Bhd.; 105.78 percent for Filati Lastex Elastofibre; 108.62 percent for Rubfil Sdn. Bhd; and 15.16 percent for "all others." 65 Fed. Reg. 11981, 11982 (Mar. 7, 2000).

<sup>92</sup> The SAA states that in assessing whether the domestic industry is vulnerable to injury if the orders are revoked, the Commission "considers, in addition to imports, other factors that may be contributing to overall injury. While these factors, in some cases, may account for the injury to the domestic industry, they may also demonstrate that an industry is facing difficulties from a variety of sources and is vulnerable to dumped or subsidized imports." SAA at 885.

<sup>93</sup> Original Determination at 20.

<sup>94</sup> Original Determination at 24.

<sup>95</sup> We also note that North American recently reported that it has borrowed \*\*\* on a new working capital line of credit since January 1, 2000, \*\*\*. North American has also indicated that it anticipates that it will borrow another \*\*\* for asset financing. CR at III-6; PR at 2.

<sup>96</sup> CR at III-7; PR at III-2-3. We note that, even though aggregate net sales volume of North American and Globe increased \*\*\* from 1998 to 1999, net sales values and unit sales values decreased. As a result, domestic industry operating income declined from \*\*\* in 1998 to \*\*\* in 1999. While COGS per pound declined by \*\*\* from 1998 to 1999, SG&A expenses increased by \*\*\* per pound. Therefore, total unit costs increased to \*\*\* in 1999 from \*\*\* in 1998. Due to the combined effect of declining unit sales values, \*\*\* per pound, and increased unit costs, \*\*\* per pound, operating income in 1999 fell \*\*\* per pound. Both net sales volumes and values declined from interim 1999 to interim 2000, while unit sales values increased by \*\*\* per pound for the same period. However, due to the increased COGS and SG&A expenses per pound, operating income decreased by \*\*\* per pound, from \*\*\* per pound in interim 1999 to an \*\*\* per pound in interim 2000. CR at III-7; PR at II-2-3.

## **CONCLUSION**

For the foregoing reasons, we determine that revocation of the antidumping duty order on ERT from Malaysia would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time.